



CITY OF DURHAM | NORTH CAROLINA

Date: May 11, 2012

To: Thomas J. Bonfield, City Manager
Through: Keith Chadwell, Deputy City Manager
Wanda Page, Deputy City Manager
From: Kevin Dick, Director – Office of Economic and Workforce Development
Joy Mickle-Walker, Downtown Development Coordinator, Office of
Economic and Workforce Development
Subject: Contract for City Services and Programs for the Downtown Durham
Municipal Service District – FY2013

Executive Summary

Under the authority of G.S. § 160A-536 (d), this item recommends the execution of the “Contract for City Services and Programs for the Downtown Durham Municipal Service District – FY2013” in order to enter into a contract with Downtown Durham, Inc. – a 501(c) – 6 organizations that has been in existence in downtown since 1993 to perform basic and enhanced services to downtown Durham. Durham City Council established a Municipal Service District pursuant to the Act on May 2, 2011 by adoption and approval of Resolution No. 9761, titled “Resolution Establishing a Business Improvement District in Downtown Durham, North Carolina” (Attachment D, BID Resolution).

A Municipal Service District (commonly referred to as a Business Improvement District “BID”) is a defined geographic area where property owners pay an additional tax in order to fund a variety of services that enhance, not replace, existing municipal services within the district’s boundaries. The establishment of a Business Improvement District “BID” addresses the following needs. (1) The need for enhanced services that will make downtown more attractive for economic development, visitor attraction and, hence, more competitive with other cities, particularly those with BID’s and (2) the need to create a financing mechanism that increases the ability of the public and private sector to execute the goals outlined in the Downtown Durham Master Plan, both the 1999 plan and the 2008 update.

As outlined in (Attachment A: Scope of BID Services) the following will be performed in downtown per the BID contract:

- Clean and Safe Services
 - Safety-related services
 - Clean and hospitality services
 - Enhanced sidewalk and furniture cleaning
 - Graffiti, litter and weed removal
 - Hospitality and ambassador services

- Targeted enhanced economic development and marketing
- Special Events Administration of CCB Plaza
- Enhanced ability to promote residential growth, tax base growth, job creation growth, property value growth.

Recommendation

OEWD recommends that the Durham City Council:

1. Authorize the City Manager to execute a contract with Downtown Durham, Inc. to provide services within the Downtown Durham Municipal Service District (“MSD”) in an amount not to exceed \$630,000.00 for FY 2013, subject to City Council budget authorization;
2. Authorize the City Manager to negotiate, approve and execute amendments to the contract if actual MSD tax revenues differ substantively from anticipated revenues as addressed by the terms of the contract; and,
3. Authorize the City Manager to negotiate, approve and execute up to two 1-year extensions to the contract, subject to City Council budget authorization for FY 2014 and FY 2015.

Background

There have been ongoing conversations about implementing a BID for downtown since 1995. A study was done by DDI in 1995 and a memo was written in 2002 with students from the Terry Sanford Institute of Public Policy at Duke University in 2002 titled “Justification for a BID”, which outlined why a BID is needed in downtown Durham. From 2010 – 2011 DDI engaged in the process of garnering support from downtown property owners and began working with City departments to negotiate a contract that provides the establishment of services and enhanced services to the Downtown BID. (MSD Report Attachment B)

In adopting the BID Resolution, the City finds a need for specialized services and programs within the BID. The area of the BID comprises the portions of downtown that have experienced a marked increase in pedestrian intensity and activity due to various economic development efforts. Multiple public and private amenities would benefit from the specialized services and programs within the BID. Amenities include, but are not limited to: the Durham Performing Arts Center (DPAC), the Carolina Theater, the Durham Bulls Athletic Park, CCB Plaza, the Downtown Durham Marriott and Convention Center, West Village, American Tobacco Campus, Brightleaf Square, Golden Belt, Central Park and the numerous businesses and restaurants throughout the BID. The BID will receive an increase in street-level, appearance-related services, such as frequent sidewalk cleaning, and pressure-washing; street level hospitality services to direct people to key downtown sites and services while acting as safety eyes-and-ears within the area of the BID; increased directed marketing and promotion of downtown attractions within the BID; concentrated special event services; and concentrated economic development programs that build upon the momentum of existing development

and leads to job creation, tax base growth and more downtown activity. The proposed BID services are listed and described in (Attachment A: Scope of BID Services).

The contract has been negotiated consistent with the approved BID Resolution Attachment D). Contractor acknowledges that the BID services budget is only an estimate of the city funds available under the contract based upon the anticipated BID tax rate to be approved by the City Council as part of the FY 2013 budget approval process. Such a BID tax rate will determine the BID tax revenues collected from the additional taxes levied on property within the BID pursuant to the BID Resolution. As drafted, the contract assumes a BID services budget that includes an estimated BID tax revenue of \$410,726.00 based upon a tax rate of up to seven cents per 100 (7 cents per 100). However, the BID tax revenues cannot be reliably estimated until the City Council sets the tax rate. If the City Council approves a BID tax rate that results in a substantial change to the current estimate, an amendment will likely be required to the contract. It is not required, however, that the BID Contract be in effect before the start of the fiscal year, as long as it is executed some time during the year in which the special tax takes effect.

Issues and Analysis

Termination for Convenience Provisions

The contract allows the parties to terminate this Contract for convenience (TFC) by giving the other party sufficient advanced written notice. If the City elects to terminate early or to not renew for a 2nd or 3rd year, the City will need to repay DDI for the amortization of equipment in addition to costs associated with early termination. By DDI entering into a contract with a subcontractor to perform clean and safe services, it will be necessary to purchase the necessary equipment to perform the scope of the contract. TFC payment(s) to the Contractor may include the costs and charges related to reasonable equipment amortization obligations to DDI's subcontractor. Pursuant to the terms of the contract, payment for reasonable equipment amortization obligations will not exceed:

- (i) \$65,000.00, if termination occurs during the first one-year of the term or the City does not renew the contract after the first one-year term;
- (ii) \$43,333, if the City renews the Contract for one additional one-year term and terminates the contract during such renewal term; or
- (iii) \$21,667, if the City renews the contract for a second one-year term and terminates the contract during such second renewal term.

Enhanced Economic Development and Marketing

Per the requirements of the Municipal Service District Act of 1973 (the "Act") contained in Article 23 of Chapter 160A of the North Carolina General Statutes the activities performed by DDI reflect the following need: The need for enhanced services that will make downtown more attractive for economic development and the visitor attraction.

DDI will provide additional and enhanced economic development and marketing activities above and beyond their current activities not limited to the following:

- (i) Updating and expanding current economic development recruitment materials for businesses, developers, residents and other investors
- (ii) Providing opportunities to educate residential & commercial realtors about downtown through realtor events and increased marketing efforts as needed (e.g. – a continuation of downtown portion of Make It Durham campaign or a similar effort).
- (iii) Expand and improve electronic marketing, such as web presence, social media, mobile applications, and other electronic media
- (iv) Strengthen Downtown "Find Your Cool" brand in order to better recruit companies, businesses, residents, and visitors by printing more t-shirts, more marketing of events than what occurred in FY12 and/or advertising in more publications than what occurred in FY12
- (v) Increase marketing of Downtown Durham as an entrepreneurial hub to recruit and retain startups by sustaining efforts such as the successful Startup Stampede and the new Smoffice Concept.
- (vi) Conduct market analyses & in-depth statistics for business recruitment by updating City Center Market Retail Analysis report when needed.

Amending BID Services Contract

The contract stipulates that the parties agree to negotiated amendments to the contract to address any substantive differences in actual BID tax revenues compared to estimated BID tax revenues. Pursuant to Section 3.0 of the contract, the City Manager has the authority to make any amendments to the contract as a result of such substantive differences in actual versus estimated BID tax revenues. The City will keep contractor informed of BID tax revenues actually collected and if it appears that BID tax revenues collected during the term of the contract will result in an overage, the City will meet with Contractor to discuss the impact of such overage on the Contract, if any.

Payment Terms

The term of the contract is for one year according to the City's fiscal calendar, beginning on July 1, 2012 to June 30, 2013 and at the discretion of the City Manager, the City has the option to renew the contract for two (2) additional one (1) year terms with an amendment extending the term for each additional fiscal year the City Council approves the appropriate funds for the BID services covered under the contract. The effective date for each renewal will be July 1, unless stated differently in the renewal amendment.

Under the contract, the City payments to DDI for each category of BID services for the fiscal year according to the categories identified in Exhibit A (of the contract), titled "BID Services Budget for FY-2013." The annual fiscal payment to Contractor for the BID services is as follows:

<u>CATEGORY OF SERVICE</u>	<u>ESTIMATED ANNUAL BUDGET</u>
BID Services Budget	\$630,000.00

DDI must submit a detailed quarterly report of program activities and accomplishments associated with the expenditure of City Funds to the City's Office of Economic and Workforce Development.

Alternatives

The City Council could vote not to authorize execution of this contract with Downtown Durham, Inc. to perform the scope of services for the Contract for City Services and Programs for the Downtown Durham Municipal Service District – FY2013. Downtown would then not have an organization to provide BID services and the City of Durham would need to find some other means of providing enhanced services within the BID, if the special BID tax is levied against property owners within the BID.

Financial Impact

Funding would come from the following sources:

General Fund	\$250,000
<u>BID Property Tax Revenue</u>	<u>\$380,000</u>
Total Estimated Revenue funding	\$630,000

Revenues from the aforementioned would pay for the enhanced services mentioned in the contract. The BID contract will be accounted for in a separate special revenue fund.

SDBE Summary

The Department of Equal Opportunity/Equity Assurance did not review this item for compliance with the Ordinance to Promote Equal Business Opportunity in City Contracting.

Attachments:

- BID Contract
- A – Scope of BID Services
- B – MSD Report
- C– BID Services Budget for FY-2013
- D– BID Resolution
- E– Map of District
- F– Summary of Proposed Clean and Safe Services